

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-18-063-RAW
)	
MICHAEL TALON BARNES,)	
)	
Defendant.)	

ORDER

Before the court is the motion of the defendant to dismiss for lack of jurisdiction. Defendant pled guilty on August 22, 2018 to possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §924(c). He was sentenced on March 14, 2019. The present *pro se* motion was filed on August 24, 2020.

Defendant argues that this court lacked jurisdiction in light of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). A challenge to the jurisdiction of the court of conviction is a challenge to the legality of the inmate's detention, and it consequently must be brought in a §2255 motion. *Nunn v. Kastner*, 541 Fed.Appx. 820, 822 (10th Cir.2013). Therefore, the court will construe the motion as one pursuant to 28 U.S.C. §2255.

Although the government does not raise the issue, the court notes the one-year limitation period of 28 U.S.C. §2255(f). The limitation period applies to a federal habeas corpus claim that the trial court lacked subject matter jurisdiction. *See Morales v. Jones*, 417 Fed. Appx. 746, 749 (10th Cir.2011). Inasmuch as the *McGirt* decision was rendered on July

9, 2020, however, it is arguable that the limitation period has not expired pursuant to 28 U.S.C. §2255(f)(3) or (f)(4). The court will not dismiss on that basis.

The court does deny the motion on the merits, for the reasons stated by the government in response (#78). Native Americans are not exempt from generally-applicable laws that apply to acts that are federal crimes regardless of where such crimes are committed. *See United States v. Carpenter*, 163 Fed.Appx. 707, 709-10 (10th Cir.2006). The court finds that 18 U.S.C. §924(c) is such a crime.

It is the order of the court that the motion to dismiss (#73), construed as a motion pursuant to 28 U.S.C. §2255, is hereby denied.

ORDERED THIS 19th DAY OF OCTOBER, 2020.

A handwritten signature in cursive script, reading "Ronald A. White", written in black ink over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma